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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,593	08/03/2001	David J. Davies	0402.003	7696

7590 06/21/2005

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The Gilbert Law Building  
22130 Clarendon Street  
Woodland Hills, CA 91367

EXAMINER
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NELSON, FRED A ANN

ART UNIT	PAPER NUMBER
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3639

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/922,593

Applicant(s)

DAVIES, DAVID J.

Examiner

Freda A. Nelson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2001.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-21 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is in response to a letter for a patent filed August 03, 2001 in which claims 1-21 were presented for examination. Claims 1-21 are pending.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 4 recites the limitation "the group of colors" in line 2. There is insufficient antecedent basis for this limitation in the claim.
2. Claim 7 recites the limitation "the group" in line 2. There is insufficient antecedent basis for this limitation in the claim.
3. Claim 16 recites the limitation "the group" in line 3. There is insufficient antecedent basis for this limitation in the claim.
4. Claim 19 recites the limitation "the aggregate monetary value" in line 5. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 101***

5. Claims 1-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

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For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-21 only recite an abstract idea. The recited steps of merely assigning a set of pricing labels mounted to a backing board to an entity, the set of pricing labels being commonly color coded and each pricing label of the set of pricing labels including a preselected price, the set of pricing labels having a preselected aggregate monetary value; selecting and affixing a pricing label to each article being sold by the entity; inventoried the articles to be sold by color coding; and accounting for gross proceeds by subtracting the aggregate value of pricing labels remaining on the backing board from the preselected aggregate monetary value does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to adjust merchandise pricing.

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts

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as explained above, claims 1-17 are deemed to be directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Sisson (Patent Number 5,582,433).

In claims 1-2, Sisson discloses garage sale pricing labels which includes a plurality of sets of label strips for different sellers in the same sale and with the different sets being color coded with different colors to identify the products (col. 2, lines 22-25). Sisson further discloses that when a sale is made, the purchaser presents the item with the appropriate sticker to the seller for payment and then the seller removes the sticker and reaffixes it to an inventory or tally board 62 (FIG.11) to record the purchase (col. 5, lines 21-24). Sisson still further discloses that at the end of the business day, each color group on the inventory board is tallied and a subtotal is determined (col. 5, lines 36-37).

In claim 3, Sisson discloses that a fifth tape roll contains a blank portion for the seller to write in the desired price himself (col. 3, lines 6-7).

In claim 4, Sisson discloses that in each sale, each family has its own set of pricing label strips, with each family's set being a separate color, such as, red, pink, turquoise, green, black, and purple (col. 5, lines 35-38).

In claim 5, Sisson discloses a preprinted pricing sticker which is easily dispensed for indicating pricing information to a potential customer (col. 1, lines 50-52).

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In claims 6-7, Sisson discloses that a combination of 25 cents, 50 cents, 75 cents, and \$1.00 stickers offers a variety of commonly used prices at a garage sale (Figs. 6a-6e; col. 4, lines 3-6).

In claim 8, Sisson discloses that when a sale is made, the purchaser presents the item with the appropriate sticker to the seller for payment and then the seller removes the sticker and reaffixes it to an inventory or tally board 62 (FIG. 11) to record the purchase (col. 5, lines 21-24). Sisson further discloses that at the end of the business day, each color group on the inventory board is tallied and a subtotal is determined (col. 5, lines 36-37). Sisson still further discloses that a preprinted pricing sticker which is easily dispensed for indicating pricing information to a potential customer (col. 1, lines 50-52).

In claim 9, Sisson discloses that a fifth tape roll contains a blank portion for the seller to write in the desired price himself (col. 3, lines 6-7).

In claim 10, Sisson discloses that in each sale, each family has its own set of pricing label strips, with each family's set being a separate color, such as, red, pink, turquoise, green, black, and purple (col. 5, lines 35-38).

In claim 11, Sisson discloses a preprinted pricing sticker which is easily dispensed for indicating pricing information to a potential customer (col. 1, lines 50-52).

In claims 12-13, Sisson discloses that a combination of 25 cents, 50 cents, 75 cents, and \$1.00 stickers offers a variety of commonly used prices at a garage sale (Figs. 6a-6e; col. 4, lines 3-6).

In claims 14, Sisson discloses garage sale pricing labels which include a plurality of sets of label strips for different sellers in the same sale and with the different sets being color-coded with different colors to identify the products (col. 2, lines 22-25). Sisson further discloses that when a sale is made, the purchaser presents the item with the appropriate sticker to the seller for payment and then the seller removes the sticker and reaffixes it to an inventory or tally board 62 (FIG. 11) to record the purchase (col. 5, lines 21-24). Sisson still further discloses that at the end of the business day, each color group on the inventory board is tallied and a subtotal is determined (col. 5, lines 36-37).

In claims 15-16, Sisson discloses that in each sale, each family has its own set of pricing label strips, with each family's set being a separate color, such as, red, pink, turquoise, green, black, and purple (col. 5, lines 35-38).

In claims 17-18, Sisson discloses that a combination of 25 cents, 50 cents, 75 cents, and \$1.00 stickers offers a variety of commonly used prices at a garage sale (Figs. 6a-6e; col. 4, lines 3-6).

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In claims 19 and 21, Sisson discloses garage sale pricing labels which include a plurality of sets of label strips for different sellers in the same sale and with the different sets being color-coded with different colors to identify the products (col. 2, lines 22-25). Sisson further discloses that when a sale is made, the purchaser presents the item with the appropriate sticker to the seller for payment and then the seller removes the sticker and reaffixes it to an inventory or tally board 62 (FIG. 11) to record the purchase (col. 5, lines 21-24). Sisson still further discloses that at the end of the business day, each color group on the inventory board is tallied and a subtotal is determined (col. 5, lines 36-37).

In claim 20, Sisson discloses that other sellers affix blank decorative stickers to the merchandise and mark the stickers by hand (col. 1, lines 32-33).

### ***Conclusion***

7. The examiner has cited prior art of interest, for example:

- 1) Esselmann (Patent Number 5,462,783), which discloses a label dispensing sheet.
- 2) Montague (US PG Pub. 2001/0042009), which discloses a computer-readable medium product label apparatus and method.
- 3) Todd (6,127,013), which discloses a system and device for identifying characteristics of objects.
- 4) "LePage's Printed Tape- Mailing labels; Pricing Labels; Kids' ID Tags; Lunch Bag Tags", September 11, 1995, Product Alert, Volume 25, n 37, p N/A.

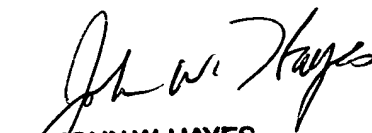
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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FAN 06/15/05



**JOHN W. HAYES**  
**PRIMARY EXAMINER**